IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

JUDGMENT

Ratna Ram & Ors. vs. The State of Rajasthan.

D.B.Cri. Appeal No.23/ 1986

Under Section 374 (2) Cr.P.C. against the judgment dated 20.12.85 passed by the Sessions Judge, Merta, in Sessions Case No.26/1983.

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Date of Judgment: 07 th September, 2007.

PRESENT

HON'BLE MR.JUSTICE BHAGWATI PRASAD
HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI

Mr.B.S.Rathore for the appellant.
Mr.JPS.Choudhary, Public Prosecutor.

BY THE COURT :(PER HON.MR.BHAGWATI PRASAD,J.)-

The present appeal has been filed by the appellants against the decision of the court of Sessions Judge, Merta in Sessions Case No.26/1983 dated 20th December, 1985.

Prosecution case was instituted on the basis of a report

lodged at Police Station Makrana by Beerma Banwari on 11.03.83 at about 07.15 AM. FIR related to the injuries caused to one Bhanwaru allegedly by the accused persons. In the first information report, six accused persons were named. Out of these six accused persons two, namely Ratna Ram and Amra Ram had died during the course of pendency of the appeal. Accused Shiv Ram named in the first information report has been acquitted by the trial court. The appeal of Ratna Ram and Amra Ram having abated due to their death, the present appeal relates to the accused Prabhu Ram, Chotha Ram and Hanuman.

According to the prosecution case Hanuman had a pharsi and Prabhu Ram and Chotha Ram had lathi with them. The accused appellants were convicted by the trial court with the aid of Section 149 IPC because two deceased and three present appellants made an unlawful assembly of five. At the trial , prosecution examined 18 witnesses. The accused also examined two witnesses and exhibited 12 documents. The defence of the accused persons was that the deceased Bhanwaru came drunk and started abusing Hanuman. He was made to understand and he went back and then came Jodha, Heera, and Shravan along with Bhanwaru with axe and and clubs and caused injuries on the person of the accused. Thus

accused claimed a right of private defence because there were injuries on the person of the accused persons . The trial court, after considering the case of the prosecution held accused persons guilty under Sections 147, 149, 302, 323 and 324 IPC. The right of private defence was not accepted by the trial court.

The learned counsel for the appellant stressed that the right of private defence, as has been claimed by the accused, was wrongly denied by the trial court because the nature of injuries on the person of accused show that it was not a one sided assault but both the parties had inflicted injuries on each other, making the case of free fight. The following injuries were found on the person of accused :

IR No.-35/11.3.83 Time of Examination 1.15 PM on 11.3.83

EX.D-8 Injury Report of Shri Hanuman dated 11.3.83 A-15/9 , P.S.Makrana.

Hanuman, s/o Shri Ratna Ram, aged 25 yrs., B/c Bawri, r/o Budsoo, dated 11.3.83-

Hanuman

1	Incised wound 3cm x 1cm x .7cm over Rt. scapula just above the medial end of spinous process.	simple	sharp	An old scar of 2.5 cmx .5cm over medial aspect of anterior side of left forearm at its middle 1/3rd	Adv.x-ray skull AP & lateral view to confirm the nature and injury of scalp	Duration Within about 0-24 hrs.
2	Lacerated wound 3.5 cm x .5cmx.4cm over occipital protuberance	simple	blunt			
3	Lacerated wound 3.5 cm c .5cm x .4 cm over scalp about 12 cm above the Rt. Ear on parietal area.	simple	blunt			
4	Lacerated wound 4 cm x.5cm x.5cm over Rt. Parietal area of scalp about 10 cm above the Rt. Ear.	-do-	-do-			
5	Bruise 13 cm x3cm over back on left scapular area	-do-	do-			
6	Abrasion 5 cm x 1.5 cm over left shoulder joint acromian process					
7	Bruise 6 cm x 1cm over middle 1/3rd area of Rt. arm on lateral aspect.					
8	Abrasion 5 cm x .3cm over posterior surface of Rt. Fore arm about 9 cm above the Rt. First joint.					
			246/ 11.3.83		SD/-seal 11.3.83	

IR No.-34/11.3.83 Time of Examination 01.10 PM on 11.3.83

EX.D-9 Injury Report of Shri Ratna Ram dated 11.3.83 A-15/10 , P.S.Makrana.

Ratna Ram, s/o Shri Bhiva Ram, aged 60 yrs. , B/c Bawri, r/o Budsoo, dated 11.3.83-

Ratna Ram

1	*2*	*3*	*4*	*5*	*6*	*7*
1	Abrasion 1 cm x . 4cm over scalp at its middle about 11 cm above the bridge of nose	simple	blunt	An old scar of 1.5 cm x .4cm over Rt. scapula	Duration Within about 0.24 hrs.	
2	Abrasion .7cm x 4 cm over occipital protuberance	-do-	-do-			
3	Stitched swelling 4 cm x 2 cm over Rt. Side of occipital area of scalp about 8 cm behind the Rt. Ear over which there is a n abrasion of . 6cm x .4cm at its centre.					
4	Complain of pain in left wrist joint but there is no evidence of any external injury.		242/11. 3.83		Sd/- 11.3.83	

IR No.-42/21.3.83 Time of Examination 06.00 PM on 21.3.83

EX.D-10 Injury Report of Shri Amra Ram dated 21.3.83 A-15/11 ,

P.S.Makrana.

Amra Ram, s/o Shri Ratna Ram, aged 28 yrs. , B/c Bawri, r/o Budsoo, dated 21.3.83-

Amra Ram

1	*2*	*3*	*4*	*5*	*6*	*7*
1	Lacerated wound with 1cm x .4cm x .3 cm over knuckle of left little finger on dorsum.	simple	blunt	An old scar of 2.5 cm x 2cm over lateral aspect of left leg just below the left knee joint.		Duration Within about 10-14 days.
		D No.297/2 1.3.83		SD/- B 21.3.83	Seal	

IR No.-43/21.3.83 Time of Examination 06.10 PM on 21.3.83

EX.D-11 Injury Report of Shri Chothu Ram dated 21.3.83 A-15/12 , P.S.Makrana.

Chothaa Ram, s/o Shri Ratna Ram, aged 20 yrs. , B/c Bawri, r/o Budsoo, dated 21.3.83-

Chotha Ram

1	*2*	*3*	*4*	*5*	*6*	*7*
1	Healed scar with scab in v shaped 5 cm x 1.5 cm over anterior surface of Rt. Forearm about 4 cm below the Rt. elbow joint.	simple	blunt	An old scar of 17 cm x 6 cm over posterior surface of left forearm.		Duration Within about 10-14 days

1	*2*	*3*	*4*	*5*	*6*	*7*
		D.No.281/ 21.03.83		Sd/- B 21.3.83		Seal

The nature of injuries on the person of accused clearly establish that they had claimed the right of private defence correctly.

Further the learned counsel for the appellant urged that the case of the prosecution was directed against the entire family of deceased Ratna Ram. The deceased appellant Ratna Ram and his six sons have been implicated as accused persons. The most startling feature in this regard is the acquittal of accused Shiv Ram. The trial court has held that Shiv Ram was not present at the scene of occurrence. In the background of the case against Shiv Ram we have to see whether the prosecution case can be relied on, because the nature of injuries received by the deceased show that he had no sharp edged injury and the prosecution has assigned the deceased appellant Ratna Ram and Hanuman, the present appellant, with sharp edged weapon. If the accused had the intention of causing the death of the deceased Bhanwaru, then naturally there should have been sharp edged injuries on his person. But absence of the sharp edged injury on the person of the deceased, clearly showed that it was not the common object of the assembly to cause the death of

Bhanwaru. When the complainant party assaulted the accused appellants, they were forced to retaliate because in this regard the most important factor is the recovery of an axe and a club from the scene of occurrence. The prosecution has failed to explain it. The complainants have not owned these weapons and have also not assigned it to any of the accused persons. Presence of the injuries on the accused and the recovery of unexplained weapons show that the complainant party had also assaulted the accused but they had the worst effect.

The learned counsel for the appellant further stressed that all the witnesses and the injured are family members of the complainant party. Independent witnesses have not been produced. False implication of Shivram is an established fact and without there being an independent corroborative evidence, the case as has been made out by the trial court, cannot be said to be made out completely, therefore, the accused are entitled to be treated in the background where they also sustained the injuries. Accused had the right to private defence and for exceeding, the accused may be sentenced to the period already undergone because during the course of trial, all the accused appellants were behind the bars . They remained behind the bars since their arrest in March 1983 till

the conclusion of the trial and, thereafter until they were released on bail by this court, Prabhuram on 23.08.88, Amra Ram and Hanuman on 02.05.86 and Chotha Ram on 04.01.88. Thus, the conviction of the accused may be set aside under section 302/149 IPC and may be converted into one under Sections 323, 324, and 325 IPC and they be released on the sentence already undergone by them.

Per contra, the learned Public Prosecutor asserted that it is a case, based on the evidence of the eye witnesses. Eye witnesses have been believed by the trail court after scrutiny of the evidence of the witnesses . The witnesses have categorically deposed against the accused and in that background it cannot be said that the conviction of the accused have wrongly been recorded.

We have heard the learned counsel for the parties and have given our thoughtful consideration to the material available on record.

First and foremost factor which is bothering our conscious is the finding of the trail court about the false implication of Shivram. In participation of the crime, if one of the accused has wrongly been included by the witnesses, then it goes a long way. It casts a serious shadow on the prosecution case, and the testimony

of the eye witnesses cannot, therefore, be accepted without any serious scrutiny.

Apart from the aforesaid factor, it is also noteworthy that an axe and a club were recovered from the place of occurrence, about which no explanation has been given by the prosecution as to who brought it. They have not been assigned to the accused and if the accused did not bring them, then who used them to get them stained with blood. If this is seen in the background of the injuries being present on the person of the accused, a sure conclusion can be drawn that the complainant were also involved in making an assault on the person of the accused persons. If both the parties have used violence against each other, then it cannot be said that there was an unlawful assemble because they also caused injuries to the deceased which were pursuant to a common object. Both the parties had a fight and the complainant had the worst of it and in that background, the participation of the accused has to be judged in the background of injuries sustained by them.

From the evidence of the witnesses it is not possible to derive a definite conclusion as to which of the accused was responsible for which injury, and therefore, in this background, it is not possible to fasten the liability of deceased Bhanwaru on any

individual and in that background, it would be safe if the accused are convicted for the injuries in the general nature. Some of the injuries sustained by accused are grievous and , therefore, invoking of Section 325 IPC would be safer course. The accused may , therefore, be sentenced to the period already undergone by them.

The accused appellants have remained behind the bars for more than three years. They may be convicted under section 325/34 IPC and their conviction under section 302/149 IPC be set aside. As regards the conviction under Section 323 and 324 IPC is concerned, we feel that Section 149 IPC having gone, and the accused having been convicted under Section 325/34 IPC, conviction of the accused under Section 325/149 IPC and conviction under Section 323 /149 IPC be also converted into one under Section 324/34 and 323/34 IPC.

Accordingly, the accused appellants are convicted under Section 325/34, 324/34 and 323/34 IPC. They are sentenced to the period already undergone. Their convictions under Sections 302/149, 147, 323/149, and 324/149 IPC are set aside. They have already remained behind the bars for sufficient period. Their sentence have already been reduced to that they have served. They

are on bail. They need not surrender. Their bail bonds stands cancelled.

(MUNISHWAR NATH BHANDARI), J. **(BHAGWATI PRASAD), J.**

L.George